A

LEE AH LAI

v.

HJ SIRAT DUAH

B

HIGH COURT, BRUNEI DARUSSALAM
DAVID JOHN LEONARD JC
[CIVIL SUIT NO: 11-2002]
6 SEPTEMBER 2004

C ***DAMAGES:*** *Personal injuries - Personal injuries causing death - Pain and suffering - Deceased died instantly in collision - Whether there was evidence deceased was conscious between time of infliction of personal injuries and time of death - Whether there was basis for an award of damages for pain and suffering - Dependency claims - Assessment of*

D

This action arose out of a tragic motor accident in which two cars collided and both drivers died. There were no eye witnesses. One of the deceased drivers was Lee Soo Wei ('Lee'). Lee Ah Lai, the plaintiff, was the father and the administrator of her estate. He

E has brought proceedings against Hj Sirat Duah, the defendant, in his personal capacity and as administrator of the estate of the other deceased driver, Mohd Noorzharfan ('Noorzharfan'). The claim was for bereavement, funeral expenses and loss and damages pursuant to the Emergency (Fatal Accidents and Personal Injuries)

F Order 1991 ('the Order'). On 26 December 2000, Lee was driving along the Seria/Kuala Belait Bypass road in the direction of Seria Town. At the same time, Noorzharfan was driving along the Seria/ Kuala Belait Bypass road in the opposite direction, towards Kuala Belait Town. There was a collision between the two cars and

G both drivers died as a result. It was the plaintiff's case that the collision was caused by the negligence of Noorzharfan who was alleged to have driven into Lee's lane. The basis for this allegation, in the absence of eyewitnesses, was the evidence given by the police officers that an area of broken glass, apparently deposited

H on the road as a result of the collision, was found in the Seria lane. It was shown in a sketch made at the scene by a police officer in which if the broken glass indicated the point of impact, it would support the plaintiff's case. This court was asked to deal with the claim for pain and suffering, brought under s. 12(b) of

I the Order.

Held:

(1) This court was satisfied on the balance of probabilities that the police officer was telling the truth about what he found when he arrived at the scene and that he had accurately recorded it in his sketch. The substantial quantity of broken glass in the Seria Lane indicated that the collision occurred in that lane and the court was satisfied on the balance of probabilities that it did. This court inferred that the car driven by Noorzharfan entered the Seria Lane into the path of Lee. There was no evidence to explain why Noorzharfan drove into Lee's path. This court held that Noorzharfan was wholly to blame for the collision. (paras 6, 7 & 8)

(2) There was no presumption in law that a person killed in a car accident experienced pain and suffering. The burden of proof, to the civil standard, on the balance of probabilities, lies throughout upon the plaintiff. There may be direct evidence of pain and suffering. Where there was positive evidence than an injured person has survived and been conscious for a period of time after sustaining injury, the court was usually able to infer from the circumstances that there has been some pain and suffering. Where there was no evidence on which the court could find that the injured person was conscious following the injury, it followed logically that the court could not find as a fact that there was pain and suffering. It was not open to the court to speculate that a deceased may have experienced pain and suffering. To do that would be to do an injustice to the defendant. A fortiori, where there was positive evidence or it was an agreed fact that the deceased died instantly in the collision, there can be no room for an award of damages for pain and suffering. Here, there was no evidence that Lee was ever conscious between the moment when she sustained her physical injuries and her death. (paras 18, 19 & 20)

(3) The apparent violence of the impact and the severe head injury that was the primary cause of death, together with the fact that Lee was pronounced dead as soon as she was taken out of the car all suggested that she was unconscious from the moment of impact. There was no evidence at all that she was ever conscious from that moment. The plaintiff failed to show that Lee was conscious at any time after receiving her

injuries. There was nothing to support a finding that she experienced any pain or suffering, physical or mental, as a result of these injuries. There was no basis for an award, however modest, for pain and suffering in the absence of a positive finding that the deceased was conscious after sustaining fatal injuries. Here, there was no evidential justification for an award of damages for pain and suffering. (paras 26, 27, 42 & 43)

(4) Where a person was killed instantly, it was wrong in principle to award damages for pain and suffering on the assumption that he must have experienced fear prior to sustaining injury. It would be wrong in principle even if there were evidence of such fear. With regard to the question of pain and suffering due to consciousness of a loss of expectation of life, no award could be made in the present case, since there was no evidence upon which the court could find that the deceased was aware that her expectation of life had been reduced by her injuries. (paras 50 & 54)

(5) The parties have agreed a figure of $13,545.63 to cover all claims for special damages save one item. That one item was a claim for the cost of a tombstone. There was a lack of firm evidence as to the net financial position of the deceased, a single mother aged 28, trying to build a business. The only evidence as to whether or not the expenditure on the tombstone was appropriate was an expression of opinion from the father of the deceased. No witness was able to testify as to the range and cop: of the monumental masonry available or as to what point in the range would be normal in the case of a person, such as the deceased. The best course would be to direct that the appropriate sum be assessed by a registrar, before whom the parties would attempt to lay some further evidence. (paras 60, & 61)

(6) The defendant was adjudged to be wholly liable to the plaintiff, hence the defendant do pay the plaintiff damages, to be assessed by the registrar in respect of dependency as follows, the costs of the assessment to be assessed by the registrar (i) the claim of dependency of Chong Chei Mee, daughter of the deceased; (ii) the claim of dependency of Lee Ah Lai, father of the deceased, at an agreed multiplier of 11 years, the multiplicant to be determined by the registrar; (iii)

the claim of dependency of Lim Got Eng, mother of the deceased, at an agreed multiplier of 14 years, the multiplicand to be determined by the registrar. (para 67)

[Order accordingly.]

Case(s) referred to:
Fong Moi Yin & Anor v. Rapian Suhaili & Anor [1994] JCBD 147 ***(refd)***
Fong Yii Tak v. Miya Omar Mira Khan [2001] JCBD 54 ***(not foll)***
Hjh Umai Hj Jalut v. Hj Khairol Azmi Hj Ali Akbar & Ors [1998] JCBD
Lim Pek Tan v. Ataur Rahman [2001] JCBD 387 ***(not foll)***
Low Yow Ying & Anor v. Sim Kok Lee & Ors [1990] SLR 1258 ***(refd)***
Peter James Stanton & Anor [1965-1986] BLR 60 ***(refd)***
Rose v. Ford [1937] AC 826 ***(refd)***
Roughhead v. Railway Executive [1949] 65 TLR 435 ***(refd)***
Siti Rozidah Jalani v. Wong Kok Sung & Anor [1999] JCBD 395 ***(not foll)***
Umar v. Khairul [1998] 1 JCBD 309 ***(refd)***

Legislation referred to:
Emergency (Fatal Accidents and Personal Injuries) Order 1991 [Bru], ss. 3(1), (2), 12(1)(a), (b)

Other source(s) referred to:
David Kemp QC, *Damages for Personal Injury and Death*, 7th edn, p 124
Charles & Percy on Negligence, 10th edn, 2001, para 4-69

For the plaintiff - Yusof Halim; M/s Cheok Sankaran Halim
For the defendant - Rudi Lee; M/s Fathan, Rudi Lee & Assoc

JUDGMENT

David John Leonard JC:

[1] This action arises out of a tragic motor accident in which two cars collided and both drivers died. There were no eyewitnesses.

[2] One of the deceased drivers was Lee Soo Wei. Lee Ah Lai, the plaintiff, is the father of Lee Soo Wei and the Administrator of her estate. He has brought proceedings against Hj Sirat bin Duah, the father of and Administrator of the estate of the other deceased driver Mohd Noorzharfan bin Yahya. The claim is for bereavement and funeral expenses and loss and damages pursuant to the Emergency (Fatal Accidents and Personal Injuries) Order 1991 ('the Order').

A **Liability**

[3] It is common ground between the parties that on 26 December 2000 Lee Soo Wei ('Lee') was driving a motorcar KF 7373 along the Seria/Kuala Belait Bypass road in the direction of
B Seria Town. On the same date and at the same time, Mohd Noorzharfan bin Yahya ('Noorzharfan') was driving motorcar KA 347 along the Seria/Kuala Belait Bypass road in the opposite direction, towards Kuala Belait Town.

C There was a collision between the two cars and both drivers died as a result.

[4] It is the plaintiff's case that the collision was caused by the negligence of Noorzharfan who is alleged to have driven into Lee's lane. The basis for this allegation, in the absence of eyewitnesses,
D is the evidence given by police officers that an area of broken glass, apparently deposited on the road as a result of the collision, was found in the Seria lane. It is shown in a sketch made at the scene by a police officer. If the broken glass indicates the point of impact, it supports the plaintiff's case.

E

[5] There was uncontested evidence that the road was wet when the parties arrived at the scene, due to rainfall earlier. A fire brigade report indicates that in order to clear away debris and oil, the road was hosed down by fire officers before the police
F photographer took photographs of the scene. That accounts for the fact that although one can see small pieces of debris on the surface of the road in the photographs, one cannot see the substantial quantity of broken glass shown in the sketch which was made before the hosing took place.

G

[6] I am satisfied on the balance of probabilities that the police officer was telling the truth about what he found when he arrived at the scene and that he has accurately recorded it in his sketch. The substantial quantity of broken glass in the Seria lane indicates
H that the collision occurred in that lane, and I am satisfied on the balance of probabilities that it did. I infer that the car driven by Noorzharfan entered the Seria lane, into the path of Lee.

[7] It is settled law (see for example Peter James Stanton and Another [1965-1986] BLR 60) that when a motor vehicle is found
I to be on the wrong side of the road at the time of collision, that is prima facie proof of negligence on the part of the driver of that vehicle. The onus shifts to that party, who is required to show that he had not been negligent.

[8] In the present case, there is no evidence to explain why Noorzharfan drove into Lee's path. I hold that Noorzharfan was wholly to blame for the collision.

There was no evidence before the court to support a finding of contributory negligence.

There will be judgment for the plaintiff on the issue of liability.

[9] So far as quantum is concerned, counsel have asked that I give judgment for the items that have been agreed. They have also asked that I deal with two contested issues. The first relates to the claim for pain and suffering, brought under s. 12(b) of the Order. The second concerns the dependency claim relating to the father of the deceased. The issue is whether it is necessary to show that the father's financial circumstances were such that he could be described as being financially dependant on the deceased.

Is Lee Ah Lai A Dependant

[10] Subsection 2 of s. 3 of the order reads:

> (2) Subject to section 4, every such action shall be for the benefit of the dependants of the person ('the deceased') whose death has been so caused.

[11] The word 'dependant' is defined in sub-s. (3) of s. 3 and it includes (s. 3(3)(c) 'any parent or other ascendant of the deceased'.

The father of the deceased is clearly a dependant for the purposes of the Act.

General Damages Pain And Suffering

[12] Section 3(1) of the order reads:

> 3(1) If death is caused by any wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

[13] Where, as in the present case, the person alleged to be guilty of the wrongful act, neglect or default has died, an action lies against his estate. See s. 11, sub-ss. (1) and (4).

[14] In the present case, the question of general damage is to be approached on the same footing subject to any special provision in the order, as in the case of a normal action for damages for personal injuries. The claimant must prove his case on the balance of probabilities by evidence.

[15] Section 3(b) in Part I of the order provides that:

> Any reference in this Order to injury includes any disease and any impairment of a person's physical or mental condition.

[16] No damages are recoverable in respect of loss of expectation of life (s. 12(1)(a) but s. 12(1)(b) is in the following terms:

> 12(1) In an action for damages for personal injuries:
>
> (a) ...
>
> (b) if the injured person's expectation of life has been reduced by the injuries, the Court in assessing damages in respect of pain and suffering caused by the injuries, shall take account of any suffering caused or likely to be caused to him by Awareness that his expectation of life has been so reduced.

[17] It follows from my finding on liability that the defendant is liable in damages for any pain and suffering resulting to Lee from the personal injuries caused to her in the collision. If there has been, in addition to physical pain and suffering, some degree of mental suffering due to awareness of a reduction in her expectation of life, that must be taken into account.

Did Lee Experience Pain And Suffering As A Result Of Her Injuries?

[18] This is a question of fact, to be decided upon the evidence. There is no presumption in law that a person killed in a car accident experienced pain and suffering. The burden of proof, to the civil standard, on the balance of probabilities, lies throughout upon the plaintiff.

[19] There may be direct evidence of pain and suffering. Where there is positive evidence that an a injured person has survived and been conscious for a period after sustaining injury, the court is usually able to infer from the circumstances that there has been some pain and suffering. Where there is no evidence on which the court can find that the injured person was conscious following the injury, it follows logically that the court cannot find as a fact that

there was pain and suffering. It is not open to the court to speculate that a deceased may have experienced pain and suffering. To do that would be to do an injustice to the defendant. A *fortiori*, where there is positive evidence or it is an agreed fact that the deceased died instantly in the collision, there can be no room for an award of damages for pain and suffering.

[20] In the present case, there is no evidence that Lee was ever conscious between the moment when she sustained her physical injuries and her death. Indeed the evidence points the other way.

[21] There is no evidence as to exactly when the collision occurred but a call reporting the accident was received by the Fire Services Department at 21.32 hours on 26 December 2000. Fire officers were on the scene by 21.40 hours and by 21.45 hours Lee had been removed from the wreck of her car. She was there and then pronounced to be dead by Dresser Reimer from the Suri Seri Begawan Hospital at Kuala Belait.

[22] A copy of the Death Register shows that Lee was brought in dead to the Suri Seri Begawan Hospital, Kuala Belait.

[23] The primary cause of death was certified in a medical report dated 27 January 2001 by Dr Farrah Shahzad as 'Head injury after road traffic accident'. That report lists the following injuries:

1. Deep laceration with depressed fracture of right frontal area.
2. Fracture nasal bone.
3. Fracture of left elbow.
4. Open fracture of left knee with bones exposed.
5. Swelling and fracture of right leg and left ankle.

Bleeding From The Nose And Both Ears Was Noted

[24] It is clear from the photographs before the court that both cars involved in the accident were very badly damaged. The vehicle driven by Noorzharfan was broken into three separate pieces which came to rest in different parts of the road. The impact of the collision must have been extremely violent.

[25] One can see clearly in the photographs the site of the depressed fracture of Lee Soo Wei's right frontal area (ie, the right temple). The bleeding from nose and ears is also clearly shown.

[26] The apparent violence of the impact and the severe head injury that was the primary cause of death, together with the fact that Lee Soo Wei was pronounced dead as soon as she was taken out of the car all suggest that she was unconscious from the moment of impact. There is no evidence at all that she was ever conscious from that moment.

[27] The plaintiff having failed to show that Lee Soo Wei was conscious at any time after receiving her injuries, there is nothing to support a finding that she experienced any pain or suffering, physical or mental, as a result of these injuries.

[28] Counsel for the plaintiff has cited in support of his claim some cases that have been decided in this jurisdiction. I do not intend to adopt the approach taken in some of those cases.

[29] In *Hjh Umai binti Hj Jalut v. Hj Khairol Azmi bin Hj Ali Akbar & Others* [1998] JCBD 309, Roberts CJ, was dealing with a claim in a fatal accident case. There the deceased was found by the learned Chief Justice to have been conscious for one and a half hours before death.

Was An Award Of Damages Of $10,000 For Pain And Suffering, Including Consciousness Of A Loss Of Expectation Of Life

[30] The learned Chief Justice made the following observation, with which I respectfully agree. At p. 323 he said, in relation to pain and suffering:

> It is well established that no such award should be made if the deceased does not recover consciousness between the accident and death.

[31] See David Kemp QC, *Damages for Personal Injury and Death* 7th edn at p. 124:

> No claim for pain and suffering will lie if the deceased was unconscious throughout the period between the injury causing death and the death itself.

[32] See also *Charlesworth & Percy on Negligence* 10th edn., 2001, para 4-69:

> In relation to pain and suffering, a claimant can only recover damages to the extent that he actually endures pain or suffering so a claimant rendered immediately and permanently unconscious

by the defendant's negligence would receive no damages for pain and suffering. *Lim Poh Choo v. Camden and Islington Health Authority* [1980] ACT 174 where Lord Scarman said at p. 188 that damages for pain and suffering "depend upon the plaintiff's personal awareness of pain, her capacity for suffering.

[33] Returning to Hjh Umai, I note that Roberts, CJ, said at p. 324: "The general principle seems to be that if unconsciousness and death follow quickly after the injury, only a modest sum will be awarded. See *Rose v. Ford* [1937] AC 826 and *Roughhead v. Railway Executive* [1949] 65 TLR 435". With that observation I also respectfully agree. The cases there cited, so far as they relate to quantum do reflect that principle.

[34] However, in *Siti Rozidah binti Jalani v. Wong Kok Sung and Another* [1999] JCBD 395, Roberts CJ, seems to have overlooked the first above-quoted principle that he stated in Hjh Umai. Dealing with a fatal accident case where it was an agreed fact that the deceased had died instantly due to severe cranial injuries sustained in the accident, he said, at p. 413, 'There is nothing to suggest that she was conscious at any time after the accidents I can therefore only follow *Rose v. Ford* [1937] *(sic)* AC 826 and award a nominal sum of $10,000 under this head, as in *Umar (sic) v. Khairul* [1998] 1 JCBD 309, at p. 324'. He gives no further reason for the award.

[35] *Rose v. Ford* [1937] AC 826 is no authority for awarding damages, nominal or otherwise, for pain and suffering where an injured person has not been proved to have been conscious at any time after sustaining the injury. The case is relevant, in the present context, only to the question of quantum. No *ratio decidendi* for the award of damages for pain and suffering can be found in the judgment in Siti Rozidah. It seems to me with the greatest respect to Roberts CJ, that he must have overlooked the principle he enunciated in Hjh Umai, to the effect that there should be no award for pain and suffering if the deceased does not recover consciousness between the accident and death.

[36] Hjh Umai is an example of the grant of nominal damages where there has been a relatively short period of consciousness between accident and death. In Siti Rozidah, where the deceased died instantly, there was no basis for the award of any sum for pain and suffering. I stress that the burden of proof lies upon the claimant. There is no presumption that would cast a burden on a defendant to show that a deceased person was not conscious after sustaining physical injury.

[37] In *Low Yow Ying & Another v. Sim Kok Lee & Others* [1990] SLR 1258 (also [1991] 2 MLJ 104) a case in the Singapore High Court, Yong Pung How CJ, said at p. 109 of the MLJ report "There was no evidence as to whether the deceased was conscious or unconscious after the accident and before he was pronounced dead about an hour later, and I therefore award no amount for pain and suffering". This was, in my view the correct approach.

[38] I now turn to the case of *Fong Yii Tak v. Miya Omar s/o Mira Khan* [2001] JCBD 54, where Roberts, C.J., awarded $5,000 for pain and suffering. There was no evidence that the deceased had recovered consciousness after receiving her injuries. The learned Chief Justice said, at p. 56:

> In *Hjh Umai binti Hj Jalut v. Hj Khairul Azmi bin Hj All Akbar and Others* [1998] 1 JCBD 309 at page 324,1 said that "the general principle seems to be that, if consciousness and death follow quickly after an injury, only a modest sum will be awarded.

[39] I think that Roberts CJ, must have intended to mean 'unconsciousness' rather than 'consciousness' in the passage quoted.

[40] He went on to say "Therefore, on the assumption that Madam Chong did not regain consciousness after the collision which killed her, I will award her $5,000 in damages, for pain and suffering".

[41] In the same case but in relation to another deceased person, Roberts CJ, said:

> There was no evidence that he was conscious at any time after the accident. I will make the same award, of $5,000, to him for pain and suffering.
>
> I appreciate that, where there is no evidence of the moment of death, and that this may have been more or less instantaneous, there may have been only a small degree of pain and suffering. In such circumstances, I consider that a modest award is appropriate.

[42] For my part, I take the view that those awards were made per incuriam, there is no basis for an award, however modest, for pain and suffering in the absence of a positive finding that the deceased was conscious after sustaining the fatal injuries.

[43] In the present case, there is no evidential justification for an award of damages for pain and suffering.

Fear Experienced Before Sustaining Physical Injury

[44] In *Lim Pek Tan v. Ataur Rahman* [2001] JCBD 387, Findlay, C, awarded $5,000 for pain and suffering and loss of amenities. The deceased died as the result of a collision that occurred at 8.15am He was dead by 8.45am but there was no evidence of time of death. The burden of proof lay upon the plaintiff but it would appear that there was no evidence adduced from which a finding might be made on the balance of probabilities that there has been a period of consciousness following injury, from which an inference might have been drawn that the deceased had experienced pain and suffering as a result of his injuries.

[45] Perhaps because he was conscious of that absence of evidence, Findlay, C, suggested a novel approach to the question of pain and suffering. He said:

> In the case, for example, where it is proved that death from the injuries was instantaneous, but there was an appreciable period of time between the negligence and the on-set of the injuries – I think of a fall from a high building – it cannot be said that the deceased's estate is not entitled to damages for the pain and suffering before the injuries were incurred.

[46] I pause here to say with due respect to the learned Commissioner, that I know if no authority for that proposition and no authority is cited in the judgment. Conduct simply arousing fear in another without more is not actionable at all. See for example *Charlesworth & Percy on Negligence*, 10th edn, 2001, para 4-69 where it is said that 'Damages are not recoverable in respect of the suffering associated with human emotions such as grief, distress or fear". See also *Hicks v. Chief Constable of South Yorkshire Police* [1992] AC 310. Bereavement is, of course, a statutory exception to the general principle.

[47] Findlay, C, goes on to say "So, in the case before me, as in almost every case of this nature, there must be a time, however brief, between the negligence, which is the cause of action, and the suffering of the injuries during which the deceased was aware of his impending doom. That consciousness that he is in danger of injury and death by the negligence of a defendant is part of his pain and suffering arising from that negligence".

[48] A cause of action for damages for personal injuries, giving rise to pain and suffering which may be physical or mental does not arise until the personal injuries are sustained. As Lord Roche said in *Rose v. Ford* at p. 856 "it was the injuries or bodily hurts of the deceased which with the negligence made and completed the deceased's cause of action".

[49] Likewise, shock experienced before sustaining injury does not by itself provide a cause of action. Thus it was said by Parker LJ, *Alcock v. Chief Constable of S. Yorkshire* (CA): (a 'nervous shock' case):

> It is, however, necessary at once to point out that that which attracts damages is not the shock itself but any recognizable psychiatric illness or disorder resulting from the shock ...

[50] Where a person is killed instantly it is wrong in principle to award damages for pain and suffering on the assumption that he must have experienced fear prior to sustaining injury. It would be wrong in principle even if there were evidence of such fear.

[51] If Findlay C, awarded damages for fear preceding death he was in my view acting per incuriam.

[52] Lim Pek Tan was followed in the Intermediate Court in *Haji Adol bin Taip v. Tiong Ming Chuong* [2002] BLR 532. In that case a sum of $10,000 was awarded where there was no evidence that the deceased was conscious after the fatal impact. The trial judge in making that award cited the statement of Findlay C, that "that consciousness that he is in danger of injury or death by the negligence of a defendant is part of his pain and suffering arising from that negligence". If that was the basis of his award, I regret to say that in my judgment the Intermediate Court Judge was misled by the dictum in Lim Pek Tan.

[53] The decisions in the Brunei Darussalam cases to which I have referred have not been tested on appeal, perhaps because the sums involved were deemed too modest to justify the expense of an appeal. I do not think that they should be followed.

Consciousness Of Loss Of Expectation Of Life

[54] With regard to the question of pain and suffering due to consciousness of a loss of expectation of life, no award can be made in the present case, since there is no evidence upon which I can find that the deceased was aware that her expectation of life had been reduced by her injuries.

Bereavement

[55] There was a claim for bereavement but it has been abandoned.

Special Damage

[56] The parties have agreed a figure of $13,545.63 to cover all claims for special damage save one item. That one item is a claim for the cost of a tombstone. It is not disputed that the sum of $23,000 was expended on a tombstone and of course the parents of the deceased were quite entitled to spend as much as they liked on a memorial for their daughter. The question is whether it is reasonable to require the defendant to pay the whole of that sum.

[57] In *Fong Moi Yin and Another v. Rapian bin Suhaili and Another* [1994] JCBD 147 at p. 156, Roberts CJ, indicated that it would not be right to expect the defendants to meet funeral expenses which were not reasonable in the circumstances of the deceased and his family. He concluded on the facts of that case that the cost of a tomb was not necessary, though a simple headstone would have been.

[58] In *Fong Yii Tak v. Miya Omar s/o Mira Khan* [2001] JCBD 54, Roberts CJ, awarded in full the sum claimed of MR25,000 in respect of a tombstone for a deceased lady and two sums of MR4,000 for tombs in respect of her two sons aged 15 years 9 months and 13 years 4 months respectively when they died. The deceased lady had been the wife of a man who had been running a goldsmith's shop in Brunei Darussalam for over 20 years. She had controlled accounts which contained over $145,000 at her death, indicating to the learned Chief Justice that this was a family of substance.

[59] These cases show that the amount to be awarded for monumental masonry, be it a headstone or tombstone, depends upon a value judgment as to what level of expenditure was appropriate having regard to such factors as the age, means and position in society of the deceased.

[60] In the present case, there was a lack of firm evidence as to the net financial position of the deceased, a single mother aged 28, trying to build up a business. The only evidence as to whether or not the expenditure on the tombstone was appropriate was an expression of opinion from the father of the deceased. No witness

A was able to testify as to the range and cop: of the monumental masonry available or as to what point in the range would be normal in the case of a person, such as the deceased.

[61] Conscious that in the circumstances any award would be
B pure guesswork, counsel were in agreement that the best course would be to direct that the appropriate sum be assessed by a registrar, before whom the parties would attempt to lay some further evidence.

C **Dependency**

[62] Counsel have jointly asked that the issue of quantum on the dependency claims be referred to the registrar.

Chong Wei Chee

D

[63] In the case of Chong Wei Chee, the daughter of the deceased, Counsel have failed to agree as to the appropriate multiplier or the multiplicand.

Lee Ah Lai

E

[64] In the case of Lee Ah Lai, the father of the deceased, counsel have agreed a multiplier of 11 years but have not agreed a multiplicand.

F **Lim Got Eng**

[65] In the case of Lim Got Eng, the mother of the deceased, counsel have agreed on a multiplier of 14 years but have not agreed a multiplicand.

G **[66]** I think that because the evidence of the financial situation of the deceased is far from satisfactory, as counsel acknowledge, it is proper to direct, as they have suggested, that assessment of the sums to be awarded for the dependency claims be referred to the Registrar in the hope that further evidence may be adduced,
H enabling a realistic assessment rather than one based on guesswork and speculation.

Conclusion

[67] In view of my finding that Noorzharfan was wholly to blame
I for the accident, counsel have agreed upon an order substantially in the following terms, that:

1. The defendant is adjudged to be wholly liable to the plaintiff.

2. The defendant do pay to the plaintiff agreed special damages in the sum of $13,545.63 and a reasonable sum to be assessed by the registrar, in respect of the provision of a tombstone for the deceased.

3. The defendant do pay to the plaintiff damages, to be assessed by the registrar, in respect of dependency as follows, the costs of the assessment to be assessed by the registrar.

   (i) the claim of dependency of Chong Mei Chee, the daughter of the deceased;

   (ii) the claim of dependency of Lee Ah Lai, father of the deceased, at an agreed multiplier of 11 years, the multiplicand to be determined by the registrar;

   (iii) the claim of dependency of Lim Got Eng, mother of the deceased, at an agreed multiplier of 14 years, the multiplicand to be determined by the registrar.

4. That the defendant do pay interest as follows:

   (i) on pre-trial special damages at 3% per annum from 26 December 2000 to 6 September 2004;

   (ii) on pre-trial loss of dependency at 6% per annum from 26 December 2000 to 6 September 2004 ;

   (iii) statutory interest on all sums awarded from 6 September 2004 until payment.

5. That the plaintiffs costs of the action be taxed if not agreed and paid by the defendant.

[68] There will be an order accordingly.